

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN ADDENDUM TO TASK ORDER 1 OF THE RESOURCE MANGEMENT AGREEMENT WITH THE ENERGY AUTHORITY, INC.; AND FOR OTHER PURPOSES.**

WHEREAS, pursuant to Resolution NO. 8883, adopted November 23, 2015, the North Little Rock Electric Department ("NLRED") entered into a Resource Management Agreement, including attached Task Order 1, with The Energy Authority, Inc. ("TEA") to provide wholesale power trading services to NLRED; and

WHEREAS, NLRED is seeking assistance with certain transactions from TEA, utilizing its trading agreements with certain counterparties, that would benefit NLRED in cost of power, but would exceed TEA's risk policy limits without NLRED's guaranty and credit support; and

WHEREAS, it is in the best interests of the City and its residents that the Addendum to Task 1 of the Resource Management Agreement be approved and entered into as part of the Resource Management Agreement with TEA.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute an Addendum to Task Order 1 of the Resource Management Agreement with The Energy Authority, Inc., in substantially similar form and content as Exhibit "A" attached hereto.

SECTION 2: Funding, if any, for the Addendum to Task Order 1 described in Section 1 above will be included as a cost of power in the annual operating budget of the NLRED.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

\_\_\_\_\_

\_\_\_\_\_  
Mayor Joe A. Smith

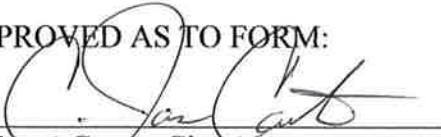
SPONSOR:

ATTEST:

  
\_\_\_\_\_  
Mayor Joe A. Smith

\_\_\_\_\_  
Diane Whitbey, City Clerk

APPROVED AS TO FORM:

  
C. Jason Carter, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED	<u>10:14</u>	A.M.	_____	P.M.
By	<u>City Atty Carter</u>			
DATE	<u>2-16-16</u>			
<b>Diane Whitbey, City Clerk and Collector</b> <b>North Little Rock, Arkansas</b>				
RECEIVED BY	<u>D. Marshall</u>			



## **Addendum to Task Order 1**

This Addendum to Task Order 1 (the "Addendum") is made part of the RESOURCE MANAGEMENT AGREEMENT (the "Agreement"), including Task Order 1 ("Task Order 1"), dated December 1, 2015 between THE ENERGY AUTHORITY, INC. ("TEA") and the NORTH LITTLE ROCK ELECTRIC DEPARTMENT OF NORTH LITTLE ROCK, ARKANSAS ("NLR"). The effective date of this Task Order shall be the \_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date"). Hereinafter, where appropriate, TEA and NLR will be referred to individually as a "Party," and collectively as the "Parties."

**WHEREAS**, NLR operates a municipally-owned electric utility system; and

**WHEREAS**, NLR is seeking assistance with certain Transactions (as defined herein) pursuant to this Addendum; and

**WHEREAS**, TEA is willing to assist NLR in such Transactions subject to the terms and conditions set forth in this Addendum; and

**WHEREAS**, TEA is willing to execute and deliver this Addendum as long as it receives the indemnity for Transactions provided by this Addendum.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, hereby agree as follows:

1. Authorization to Enter Into Transactions.

From time to time, NLR may determine that it would like TEA to enter into transactions that, without NLR's guaranty and credit support, would exceed TEA's Risk Policy Limits. In such case, and at NLR's direction, NLR hereby (i) authorizes TEA to enter into as principal on NLR's behalf, and (ii) agrees to provide the credit support as described in Section 2. below for one or more Bilateral Transactions utilizing trading agreements between TEA and certain counterparties whenever the term, maturity or notional amount of such transactions is expected to or does exceed any of the then current credit or market risk limits in TEA's Risk Policy (the "Transactions").

For clarity, the Transactions entered into pursuant to this Addendum shall be "Bilateral Transactions" as that term is used in Task Order 1 – Section A.1<sup>1</sup>; provided, however, that (i) the timing and duration limits applicable to Bilateral Transactions pursuant to the first paragraph of Section A.I of Task Order 1 shall not apply to Transactions entered into pursuant to this Addendum, and (ii) the credit and indemnification requirements set forth in this Addendum shall apply only to Transactions entered into pursuant to this Addendum, and shall not apply to Bilateral Transactions that meet the timing and duration limits expressed in the first paragraph of

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<sup>1</sup> The original Task Order 1 provides for Bilateral Transactions with terms of one year or less and with delivery dates within the next two years, which complies with TEA's Risk Policy as of the date of execution of this Addendum.

Section A.I of Task Order 1. TEA will communicate to NLR changes to its Risk Policy Limits that could impact future Transactions; provided, that, any such changes will not affect existing Transactions.

## 2. Guaranty and Indemnification of Transactions.

NLR hereby guarantees all obligations of TEA under the Transactions and agrees to issue credit support for the Transaction(s) as may be requested by TEA's counterparty(ies) to such Transaction(s). In addition, NLR agrees to indemnify, defend, and hold TEA harmless for any loss, cost, penalties, fines, damages, or expense (including attorney's fees) incurred by it by reason of the Transactions, or rejection of such Transactions due to counterparties' treatment of credit support required of NLR.

NLR's agreement to so guaranty, indemnify, defend, and hold TEA harmless is further intended to benefit the Members of TEA such that such Members shall not incur any loss, cost, penalties, fines, damages, or expense related to the Transactions by reason of payment by any of such Members under TEA's guaranty facility provided by the Members or any similar credit facility. TEA's guaranty or credit facility shall not be used for these Transactions. The Parties agree that credit support provided by NLR will only be used to support NLR's Transactions.

The indemnification obligations set forth in this Section 2. of this Addendum supplement the obligations set forth in Sections 7. and 8. of the Agreement. In the event of an inconsistency between this Addendum and the Agreement with respect to indemnification provisions for Transactions, the Parties hereby agree that the guaranty and indemnification provisions of this Addendum shall control with respect to Transactions.

## 3. Representations and Warranties.

NLR further represents and warrants as follows:

- (a) It is a non-profit corporation that manages the utility assets of the City of North Little Rock, Arkansas;
- (b) The execution, delivery and performance of this writing have been and remain duly authorized by all necessary governmental and board action and do not contravene any provision of NLR's organizational or governing documents or any law, regulation or contractual restriction binding on it or its assets; and
- (c) No authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over NLR is required on the part of NLR for the execution and delivery of this writing, other than those which have been obtained.

## 4. Credit Support Information.

NLR shall provide credit support information and documentation to TEA or the engaged

counterparties, as necessary, to support, execute, and complete the Transactions contemplated by this Addendum. Any guaranty used as credit support shall be in a form approved by NLR, TEA, and the subject counterparty.

5. Commencement and Termination.

The Transactions set forth in this Addendum, if any, shall only commence after execution of this Addendum by both Parties, and shall continue until terminated as provided for in the Transactions. Either Party may terminate this Addendum, without terminating the underlying Agreement or Task Order 1, by providing thirty (30) days written notice to the other Party. Any such termination of this Addendum shall not affect or excuse the performance of either Party under any Transaction that survives any such termination and the obligations of the Parties under this Addendum shall remain in effect with respect to Transactions entered into prior to the effective date of such termination.

6. Counterparts.

This Addendum may be executed in one or more counterparts, each of which will be deemed to be an original, and such counterparts together will constitute the original Addendum.

7. Amendment(s).

Except as modified herein, the terms of the Task Order 1 remain unchanged by this Addendum. This Addendum may be amended by an instrument in writing signed by each Party's authorized representative.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Addendum to be executed in their respective names by their duly authorized representatives.

NORTH LITTLE ROCK ELECTRIC  
DEPARTMENT OF NORTH LITTLE ROCK, AR

THE ENERGY AUTHORITY, INC.

By: \_\_\_\_\_  
Name: Joe A. Smith  
Its: Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Joanie C. Teofilo  
Its: President and CEO  
Date: \_\_\_\_\_